

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

27287

FILE: B-213499**DATE:** January 26, 1984**MATTER OF:** Omni-State Service Corporation**DIGEST:**

Protest against contracting officer's rejection of small business bidder as nonresponsible is sustained since contracting officer did not refer the matter to the Small Business Administration (SBA) as required by law. GAO recommends referral to SBA and termination of contract awarded to another bidder should SBA determine that low bidder is responsible.

Omni-State Service Corporation protests the rejection of its bid by the Department of Labor's Mine Safety and Health Administration under solicitation No. S2840068 issued as a small business set-aside for security services for the Administration's facility in Triadelphia, West Virginia. The Administration determined that Omni-State, a small business, lacked the necessary experience to perform this contract and therefore rejected the firm as nonresponsible. Omni-State challenges that determination.

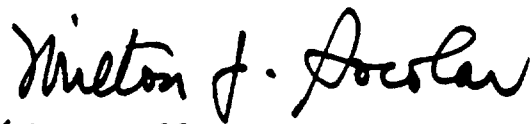
Bids were opened on August 9, 1983, and on August 10, the Administration requested that Omni-State verify its bid and submit a list of projects performed similar to this requirement and a copy of its corporate charter. Omni-State responded to this request on August 23. The Administration then contacted Omni-State's references and by letter of September 12, it advised Omni-State that its bid was rejected on the basis that the firm lacked the necessary experience. On September 27, Omni-State hand-delivered to the Administration a written protest of its rejection. The Administration denied the protest on the basis that the firm failed to affirmatively demonstrate its responsibility. On October 24 Omni-State filed this protest with our Office. Award has been made to Dallas Pike Security Company.

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Although the protester, a self-certified small business concern, has not raised the issue, the record indicates that the Administration did not recognize its obligation to refer the matter of the protester's non-responsibility to the Small Business Administration (SBA). Under 15 U.S.C. § 637(b)(7) (1982), whenever a contracting officer makes a determination that a small business is nonresponsible he must refer the matter to the SBA, which has conclusive authority to determine whether a small business bidder is nonresponsible. The contracting officer did not do that here. Therefore, we are recommending that the Administration now refer this matter to the SBA. See Jackson Lumber Company, Inc., B-199077, February 9, 1981, 81-1 CPD 75. We are further recommending that if the SBA issues a certificate of competency, the Administration should terminate for the convenience of the government the contract awarded to Dallas Pike and make award to Omni-State.

Since this decision contains a recommendation that corrective action be taken, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations, and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720, as adopted by Public Law 97-258 (formerly 31 U.S.C. § 1176 (1976)), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.

The protest is sustained.

for 
Comptroller General
of the United States